

A2001-31
I-K-06

John Silvasi

04/07/03 09:50 AM

To: Joann Allman/RTP/USEPA/US@EPA

cc:

Subject: OMB comments: 8-hr O3 NAAQS Comments

John J. Silvasi
Environmental Engineer
Ozone Policy and Strategies Group (C539-02)
Office of Air Quality Planning and Standards
U.S. Environmental Protection Agency
Research Triangle Park, NC 27711
919-541-5666 (v); 919-541-0824 (fax)
silvasi.john@epa.gov

----- Forwarded by John Silvasi/RTP/USEPA/US on 04/07/03 09:49 AM -----



Amy_L._Farrell@omb.eop.gov

02/14/03 07:56 AM

To: John Silvasi/RTP/USEPA/US@EPA

cc: Denise Gerth/RTP/USEPA/US@EPA, Jan

Tierney/DC/USEPA/US@EPA, Jim

Ketcham-Colwill/DC/USEPA/US@EPA, Kevin

McLean/DC/USEPA/US@EPA, Lydia

Wegman/RTP/USEPA/US@EPA, Tom Helms/RTP/USEPA/US@EPA,

Allen Basala/RTP/USEPA/US@EPA, Arthur_G._Fraas@omb.eop.gov,

tammy.schirf@navy.mil, jean.vernet@hq.doe.gov,

John_A._List@cea.eop.gov, Keith.Holman@sba.gov,

Cecilia.Ho@fhwa.dot.gov, Camille.Mittelholtz@ost.dot.gov

Subject: 8-hr O3 NAAQS Comments

1st set of DOT comments....more to follow.

----- Forwarded by Amy L. Farrell/OMB/EOP on 02/14/2003 07:46 AM -----

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To: Amy L. Farrell/OMB/EOP@EOP

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Subject: Re: 8-hr O3 NAAQS Implementation Proposed Rule--2 Powerpoint Presentations

Amy--

Attached is the first set of comments that FHWA has prepared. Camille Mittelholtz asked me to send them to you directly.

As mentioned in my previous e-mail, we will be sending you additional comments by tomorrow.

Please let me know if you have any questions. Thanks for the opportunity to review.

Cecilia

>>> Amy_L._Farrell@omb.eop.gov 02/11/03 11:31PM >>>

All -

Hope this helps with your review. Please try to get comments tomorrow (Wednesday) or as close to tomorrow as possible so we can have a meaningful follow-up call in the near future.

Thanks,

Amy

----- Forwarded by Amy L. Farrell/OMB/EOP on 02/11/2003 08:15

PM -----

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To: Amy L. Farrell/OMB/EOP@EOP

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Subject: 8-hr O3 NAAQS Implementation Proposed Rule--2 Powerpoint Presentation
s

Hi, Amy,

As a follow-up from last Friday's meeting, I am forwarding to you the 2 Powerpoint presentations concerning the proposed rule--an expanded version and a short version. Can you please arrange to send them to Art and others who participated from the other federal agencies?

Also, Tom Helms will call Art on Thursday this week to check on status of OMB review. Also, we are still trying to pull together some of the

Other information requested at the Friday call and will get that to you as soon as possible.

Thanks!

(See attached file: 8-HOUR O3_021003_omb.PPT) (See attached file: short_version_8-hr_021003_omb.ppt)

John J. Silvasi

Environmental Engineer
Ozone Policy and Strategies Group (C539-02)
Office of Air Quality Planning and Standards
U.S. Environmental Protection Agency
Research Triangle Park, NC 27711
919-541-5666 (v); 919-541-0824 (fax)
silvasi.john@epa.gov

Message Copied To: _____

—
Wegman.Lydia@epamail.epa.gov
Helms.Tom@epamail.epa.gov
Gerth.Denise@epamail.epa.gov
Tierney.Jan@epamail.epa.gov
McClean.Kevin@epamail.epa.gov
Ketcham-Colwill.Jim@epamail.epa.gov



8hourrul.do

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To: _____

"Marner, Abbe <FTA>"
"Mittelholtz, Camille <OST>"
"Ramsden, Todd <OST>"
"Wheeler, Daniel <FHWA>"
"Jensen, Gary <FHWA>"
"Shrouds, James <FHWA>"
"Lee, Susan <FHWA>"
"Savonis, Michael <FHWA>"



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EPA's Proposed Rule to Implement the 8-hour Ozone NAAQS FHWA Office of Natural and Human Environment Comments

Clarification of source of comments: FHWA staff received two documents related to the EPA proposed rule to implement the 8-hour ozone NAAQS. A proposed rule dated December 26, 2002 was transmitted to FHWA on January 24, 2002 by the Office of Management and Budget (OMB) and received on January 26, 2002. A document dated January 17, 2002 containing new sections V.C. "How will EPA transition from the 1-hour to the 8-hour standard?" and "V.D. What obligations will remain applicable requirements under the mechanism selected for transitioning from the 1-hour to the 8-hour standard?" was transmitted to FHWA by OMB on February 5 and received on February 7, 2002. Based on the language in the January 17, 2003 document, it would appear interim changes were made to the December 26, 2002 document however; FHWA staff have not reviewed any other versions of the proposal. The comments are based on a review of the two documents reviewed by FHWA and except where otherwise noted, are based on the December 26, 2002 version of the document. The discussion of topics correlates with the order of first occurrence in the proposal and does not reflect order of significance to FHWA.

Attainment Dates (Section V.B.)

Section V.B.6. describes an incentive feature. Notwithstanding the "expeditiously as possible" requirement - areas designated under subpart 1 would seemingly have better air quality than areas designated under subpart 2. Subpart 1 areas have longer (5 years) to demonstrate attainment than do areas designated marginal under subpart 2 or a moderate area under subpart 2 opting for the incentive feature – each of these would have 3 years to demonstrate attainment. This seems counter intuitive – both in terms of achieving the NAAQS and improving air quality in an expeditious manner.

Revocation of the 1-hour Rule (Section V.C. How will EPA transition from the 1-hour to the 8-hour standard? 1/17/03 draft)

In Section V.C.3., EPA is soliciting comment on the alternative of "retaining the 1-hour standard itself (and the associated designations and classifications), at least for certain purposes, for a longer period of time after designations for the 8-hour ozone standard as a means to prevent air quality from degrading."

- FHWA recommends repeating or incorporating the language in V.C.2.a. and V.C.2.b. that indicates transportation conformity would not apply to the 1-hour standard to section V.C.3.

Anti Backsliding Provisions (Section V.D. What obligations will remain applicable requirements under the mechanism selected for transitioning from the 1-hour to the 8-hour standard? 1/17/03 draft)

Section V.D. begins discussing CAA's anti-backsliding provisions regarding current CAA requirements under the 1-hour ozone standard. Section V.D.1. discusses control obligations in maintenance plans. EPA proposes that certain components of the maintenance plan obligation

would no longer apply once the 1-hour standard is revoked, including the requirement to demonstrate conformity to the budget in the approved maintenance plan. However, in section V.D.2.a., the document states “States could submit SIP revisions, if needed, to eliminate these obligations under the 1-hour maintenance plan.”

- Does this final statement regarding SIP revisions apply to transportation conformity? Will 1-hour maintenance areas have to amend their SIPs before 1-hour conformity is no longer required? If not, we recommend that this should be clearly stated. If maintenance SIPs will need to be revised, then we recommend that EPA detail this further throughout the proposal, especially in the transportation conformity section of the proposal.
- In areas not designated under the 8-hour standard that have TCMs in their 1-hour SIP it unclear who would be responsible for the timely implementation of said TCMs under the proposed revocation and anti-backsliding provisions.

NOx Provisions (Section V.M. How will the section 182(f) NOx provisions be handled under the 8-hour ozone standard?)

Section V.M.10 (What impact will the implementation of the 8-hour ozone standard have on a State’s Transportation Conformity SIP?) should reference the transportation conformity regulations, not the general conformity regulations.

Transportation Conformity (Section V.N. What requirements for transportation conformity should apply under the 8-hour standard?)

In previous communications, EPA staff indicated if an area designated nonattainment under the 8-hour rule had the same geographic boundary as the previously existing 1-hour nonattainment or maintenance area, then the area would not be required to make a new conformity determination at the end of the one year grace period. EPA indicated they intended to a separate conformity proposal for the new standards that would allow areas to use the 1-hour budget test to demonstrate conformity for the 8-hour standard, if the nonattainment area stays the same size. FHWA supports this approach and encourages EPA to complete this rule prior to area designations as indicated in V.N.3.

New Source Review – Clean Air Development Communities (Section V.P. How should the NSR Program be implemented under the 8-hour ozone NAAQS? especially section V.P.8. NSR Option to Encourage Development Patterns that Reduce Overall Emissions – Clean Air Development Communities).

FHWA is extremely concerned about the language proposed in Section V.P.8. related to Clean Air Development Communities. Existing regulations under 23 CFR 450.300 Subpart C – Metropolitan Transportation Planning and Programming require MPOs to consider (among a list of other planning elements) land use and transportation planning interactions in their planning processes, plans, and transportation improvement programs. Since this section discusses an areas transportation system and land use/development interactions and has a direct impact on the highway program, **FHWA requests more time to review this section in a more thorough manner and will provide additional comments.**

Some initial comments include the following:

- Although part of the New Source Review section of the proposal, this section deals substantially with on-road motor vehicle travel and emissions. For this reason, comments should be solicited and carefully considered from transportation stakeholders including State departments of transportation and metropolitan planning organizations. However, because of the length of the proposal, and the location of this option as a subsection on NSR, transportation reviewers may miss this provision. We recommend that this section be more clearly highlighted by at least revising the title to include “on-road emissions.”
- EPA acknowledges that many of these developments, including brownfield revitalizations, will impact different emissions sources, including mobile sources. However, EPA is proposing to limit the emissions benefits generated by initiatives associated with CADC to new source review. FHWA suggests that if a “pool” or “banks” of offsets were to be established, they should be applicable to all sources, including mobile sources, but not just limited to point source.
- FHWA encourages EPA to recognize that highways have varying land use patterns associated with them, and not all of the development patterns surrounding necessarily consume large amount of land or have agricultural or environmental impacts. For example, a properly designed and mitigated highway can have little or no impact on the environment, and with appropriate access controls, may have a limited impact on development patterns. The language in this proposal leans towards equating all highways with sprawl. There is much more to development patterns than transportation, and EPA should recognize other influences, including housing costs, land rent theory, public infrastructure provisions, crime rate, perceived quality of schools, and personal preference to where people want to live.
- Section V.P.8.c. states, “areas that chose to pursue these NSR flexibilities would not be able to include the effects of land use in their motor vehicle emissions budgets in the SIP, or in the area’s transportation conformity determinations.” Because this would directly impact transportation conformity, the transportation conformity section of the proposal should also reference this option.
- Section V.P.8.d. states, “It may be very complicated for areas to avoid double-counting.” Although proposal recognizes that land use choices are often not explicitly quantified and are actually part of the overall population and employment allocation in the travel demand model, the proposal does not go on to propose how double counting could be avoided. It is recommended that EPA revise this section to require that States would have to work with metropolitan planning organizations to determine if the land use activities would be reflected as land use assumptions per “Improving Air Quality Through Land Use Activities.” If so, it may be impossible to separate out the effects of these measures, and still accurately model travel activity and motor vehicle emissions. It should also reference the EPA publication “Comparing Methodologies to Assess Transportation and Air Quality Impacts of Brownfield’s and Infill Development.” In particular, it should note that a methodology that assumes the growth would have gone to a single Greenfield site should not be used in SIP development. The proposal is counter to existing state of the practice related to travel demand modeling and would place additional requirements on MPOs.

- In section V.P.8.e., the proposal states that a “CADC does not have to be, and in most cases probably would not be an entire metropolitan area covered by a SIP.” This seems to fly in the face of both regional air quality and transportation planning. How could one separate out the VMT? What if VMT is reduced in the CADC, but that actually has causes an increase in VMT regionally? We recommend that this provision be deleted from the option, or at least clarify that even if a smaller CADC was designated, any analysis would have to reflect and consider effects on the nonattainment area as a whole.
- In section V.P.8.f., the proposal states, “In areas where the development is characterized as spread out, low density, and auto-dependent, air pollution from mobile sources tends to increase because of the increased number of mile an individual has to travel for each trip. However, if areas adopt development practices that decrease VMT, automobile and truck emissions would be reduced. The impact of VMT on air quality has long been recognized as significant.” This is very simplistic, and somewhat misleading. First, because of population and economic growth, there are really no development practices that “decrease VMT.” Some may decrease the rate of growth of VMT or hold the per capita VMT constant, but total VMT will continue to increase. Second, on-road emissions have decreased at the same time as VMT as increased, so any effect is really a relative effect between alternatives. Although in many places on-road sources are a substantial part of the emission inventory, growing VMT has not been a significant factor. In fact, the percentage of total emissions that come from on-road sources has decreased. Depending on the nature of the development and the region’s planned transportation system, as well as many other factors, motor vehicle travel may not grow as fast as it would have had the land use strategies not been implemented. In this case, future motor vehicle emissions may also be lower than expected prior to the implementation of the land use strategies.” And finally, there is no mention of the role of jobs housing balance, affordable housing relative to the new economic opportunity (job wage rate), impacts of two or more wage earners in the same household with different job opportunities or locations, etc.
- In section V.P.8.g., the proposal begins a discussion on “What is the connection between land development and NSR?” Although this is not a methodology section, its examples seem to follow a methodology that assumes the growth would have gone to a single Greenfield site. As mentioned above, EPA’s “Comparing Methodologies to Assess Transportation and Air Quality Impacts of Brownfield’s and Infill Development” states that this methodology should not be used in SIP development. Therefore, the proposal should clearly state that these examples are hypothetical, and that analysis that is more detailed would be required to ensure that regional emissions would actually be reduced. The use of the word “will” in the second paragraph (the source “will” be able to take advantage of existing infrastructure in a developed area and existing developed areas will result in reduced VMT) should be replaced with “may”. Some industries have additional requirements not served by the existing or aging infrastructure and due to other factors mentioned in these comments the resulting VMT may or may not be reduced.
- In section V.P.8.h., the proposal states, “low density development patterns tend to disturb more land and create more impervious cover over a region (e.g., paved roads),

harming a region's water quality and disrupting habitat." While low-density areas may have a larger percentage of impervious surfaces attributed to paved roads, the total percentage of impervious surfaces may be lower than a densely developed area. The relative percentage of distribution of impervious surfaces in densely developed areas attributed to highways may be lower, but the total impervious surface area may be higher than low density areas.

- Section V.P.8.i. includes a sample list of land use activities that may improve air quality. A more comprehensive discussion of the strategies is provided in a guidance document. Consistent with the majority of the proposal these could be included by reference. Some of the proposed strategies implemented out of context may actually increase vehicle emissions and or unintentionally promote sprawl – while others may require and/or suggest changes to federal lending programs, property acquisition policies, and so forth.
- Section V.P.8.m. indicates that this proposal states that land use decisions would remain local. Section V.P.8.n. goes onto state that the CADC could not be changed without a SIP amendment. This clearly places federal agencies in a position to make land use decisions contrary to existing laws and regulations that explicitly prohibit such actions.
- Section V.P.8.o. fails to identify the range of disadvantages to land use planning.

PM 2.5 (Section V.Q. How will EPA ensure that the 8-hour ozone standard will be implemented in a way which allows an optimal mix of controls for ozone, PM2.5, and regional haze?)

Section V.Q. discusses PM2.5 nonattainment areas extensively. The PM 2.5 rule has not yet been promulgated. FHWA cannot adequately evaluate this section absent a draft proposal for the PM 2.5 rule.

Early Action Compacts (Section VII. Other Considerations)

- Early Action Compacts are allowed in areas “designated attainment and ‘clean’ for the 1-hour ozone standard, i.e., no monitored violations.” We recommend that the proposal clearly state that 1-hour maintenance areas are eligible for Early Action Compacts.
- When will the 1-hour standard be revoked for areas with Early Action Compacts? The primary option in the proposal is to revoke the 1-hour standard one-year after the effective date of the 8-hour designations. However, under Early Action Compacts, the effective date would be deferred. Therefore, the document should discuss how the 1-hour standard would be revoked in areas with Early Action Compacts.
- In section VII.A.3, the third paragraph is a very confusing. It states “As a result, EPA plans to propose to defer the effective date of the nonattainment designation for these areas contingent upon each participating area’s meeting all remaining terms and milestones of the agreement. However, while the Agency cannot prejudice the 2004 designations process, States are advised that if a compact area is determined to be part of an area that is designated nonattainment for the 8-hour standard, its nonattainment designation would not be deferred.” What does this mean? Is this saying that even if an area meets all of the compact protocol requirements, EPA may designate it

nonattainment anyway? It is recommended that this section be revised to clearly state EPA's intent and the risks involved with Early Action Compacts.

Other Comments

The proposed rule references forthcoming rules for transport, PM2.5, and transportation conformity. FHWA continues to be interested in the anticipated timelines for each of these outstanding issues.

The proposed rule references several supporting documents that have not been provided. This analysis has been conducted without consideration of any supporting materials.

Appendix IX Summary of Today's Proposal – the December 26, 2002 version incorrectly stated the RFF percentage at 18 instead of 15 percent.